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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/729,777	12/06/2000	Haruaki Eto	396.39350X00	7717

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EXAMINER

AHMED, SHEEBA

ART UNIT	PAPER NUMBER
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1773

DATE MAILED: 03/06/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/729,777

Applicant(s)

ETO ET AL.

Examiner

Sheeba Ahmed

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☐ Claim(s) 9-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) 9-22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

**DETAILED ACTION**

***Response to Amendment***

1. Claims 1-8 have been cancelled in the above-identified application. New claims 9-22 have been added. **Claims 9-22 are now pending.**

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 22 is rejected under 35 U.S.C. 102(b) as being anticipated by Mckeady (WO 95/13135).

Mckeady discloses an oxygen-absorbing composition contained in an envelope of spun-bonded polyolefin wherein the composition comprises a 100 to 325 mesh particulate annealed electrolytically reduced iron in an amount up to 63% by weight (See Abstract). The envelope is a spun-bonded polyolefin known by the trade name TYVEK and inherently meets the limitation that the package is air-permeable packaging material (*given that spun-bonded polyolefin known by the trade name TYVEK is gas permeable*) (See Page 4, lines 28-30). The electrolyte to activate the iron is present in an amount between about 1 and 2% (Page 5, lines 28-35). Example 4 shows that the composition may comprise 0.34 grams of 100 mesh electrolytically reduced iron and no other iron particles (*thus meeting the limitation that the amount of iron passable through*

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a 200-mesh sieve is less than 5% by weight). With regards to the limitation that the oxygen-absorbing package is made by the process of claim 9, the Examiner wishes to point out that the determination of patentability for product claims containing process limitations is based on the product itself and not on the method of production. If the product is the same or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process. *In re Thorpe*, 227 USPQ 964, 966 (Fed. Cir. 1985) and also see MPEP 2113. In this case, the product (i.e., the oxygen-absorbing package) is the same despite the process limitations of claim 9. All limitations of claim 22 are either inherent or disclosed in the above reference.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 10, 11, 15, and 17-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mckeady (WO 95/13135) in view of Otsuka et al. (US 4,579,223).

Mckeady (WO 95/13135), as discussed above, do not state that the oxygen absorbent package is manufactured using a three-sided automatic filling machine. However, Otsuka et al. disclose an oxygen absorbent package comprising a gas permeable outer material layer and iron powder as the oxygen absorbent (Column 1,

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lines 1-15 and Column 2, lines 44-47) wherein the packet is manufactured according to a three side-sealing method which increases the water resistance of the packet and reduces the tendency of the inner and outer material layers to peel or separate (Column 5, lines 30-55). A three-side sealing automatic filling and packing machine or other means may be used to do this (Column 7, lines 3-6). Accordingly, it would have been obvious to use a three-side sealing automatic filling and packing machine given that Otsuka et al. teach that doing so increases the water resistance of the packet and reduces the tendency of the inner and outer material layers to peel or separate.

4. Claims 12-14 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mckeady (WO 95/13135) in view of Otsuka et al. (US 4,579,223) and Cerbo (US 3,969,224).

McKeady and Otsuka et al., as discussed above, do not state that the smaller particle size iron powder is removed and is specifically removed by a separation method utilizing centrifugal force. However, Cerbo discloses a method of separating different size particles wherein the method is thoroughly reliable in operation (Column 1, lines 61-68). The method utilizes a receptacle at a speed that centrifugally projects the particles therefrom and the particles are projected over different distances proportional to their masses (Column 2, lines 3-9) The particles range in size from 80 mesh to 325 mesh (Column 3, lines 2-6). Accordingly, it would have been obvious to one having ordinary skill in the art to remove the smaller particles from the composition disclosed by

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McKeady and Otsuka using the method taught by Cerbo given that such a method is thoroughly reliable in operation.

5. Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over McKeady (WO 95/13135) in view of Takahashi et al. (US 5,972,452).

McKeady (WO 95/13135), as discussed above, do not state that the oxygen absorbent package is manufactured as a strip of a series of oxygen-absorbing packages. However, Takahashi et al. disclose a oxygen absorbing member comprising iron powder as the oxygen absorber (Column 6, lines 47-52) and formed as a self adhesive continuous strip attached to a separator layer to obtain continuous self adhesive strips that may be stored in roll shape by winding on a drum (Column 9, lines 1-8). Accordingly, it would have been obvious to one having ordinary skill in the art to form the oxygen absorbing package disclosed by McKeady as a series of strips given that Takahashi et al. specifically teach that doing so allows the strips to be stored in roll shape by winding on a drum.

### ***Response to Arguments***

6. Applicants arguments relating to the rejections based upon McKeady (WO 95/13135) have been considered but are deemed not persuasive. Applicants submit that McKeady is directed to an oxygen absorbing composition wherein McKeady does not teach the use of a granular iron powder which contains 5% by weight or less of iron powder capable of passing through a 200-mesh standard sieve. Applicants further

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submit that McKedy teaches away from the claimed iron powder given that McKedy discloses the desirability of using a relatively fine iron powder. The Examiner disagrees with the Applicants interpretation of McKedy. First, the Applicant's attention is directed to Example 4 which shows that the composition comprises 0.34 grams of 100 mesh electrolytically reduced iron and no other iron particles and thus meets the limitation that the amount of iron passable through a 200-mesh sieve is less than 5% by weight. Second, the Examiner would like to point out that McKedy does not teach away from the use of larger iron particles (as evidenced by Example 4) and simply states that a larger particle size results in slower absorption of oxygen (which may be desirable depending on the particular application).

### ***Conclusion***

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

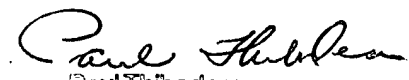
8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sheeba Ahmed whose telephone number is (703)305-0594. The examiner can normally be reached on Mondays and Thursdays from 8am to 6pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paul Thibodeau can be reached on (703)308-2367. The fax phone numbers for the organization where this application or proceeding is assigned are (703)305-5408 for regular communications and (703)305-3599 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)306-5665.



Sheeba Ahmed  
March 1, 2003



Paul Thibodeau  
Supervisory Patent Examiner  
Technology Center 1700